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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,303	04/27/2000	CHRISTOPHER R KING		5407

7590 11/29/2001

CHRISTOPHER R KING  
7508 WOOD COURT  
FISHERS, IN 46038

[REDACTED] EXAMINER

MANAHAN, TODD E

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/530,303	King
	Examiner	Art Unit
	Todd E. Manahan	3732
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b> A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b> 1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>23 Aug 2001</u> 2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final. 3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.		
<b>Disposition of Claims</b> 4) <input checked="" type="checkbox"/> Claim(s) <u>18-34</u> is/are pending in the application. 4a) Of the above, claim(s) _____ is/are withdrawn from consideration. 5) <input type="checkbox"/> Claim(s) _____ is/are allowed. 6) <input checked="" type="checkbox"/> Claim(s) <u>18-34</u> is/are rejected. 7) <input type="checkbox"/> Claim(s) _____ is/are objected to. 8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.		
<b>Application Papers</b> 9) <input type="checkbox"/> The specification is objected to by the Examiner. 10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner. 11) <input checked="" type="checkbox"/> The proposed drawing correction filed on <u>23 Aug 2001</u> is: a) <input checked="" type="checkbox"/> approved b) <input type="checkbox"/> disapproved. 12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.		
<b>Priority under 35 U.S.C. § 119</b> 13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *See the attached detailed Office action for a list of the certified copies not received.		
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).		
<b>Attachment(s)</b> 15) <input type="checkbox"/> Notice of References Cited (PTO-892)      18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)      19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____      20) <input type="checkbox"/> Other: _____		

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## **DETAILED ACTION**

### *Drawings*

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 23 August 2001 have been approved.

### *Specification*

The substitute specification filed 23 August 2001 has been entered.

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### *Claim Objections*

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

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Misnumbered claims 1-17 of amendment filed 23 August 2001 been renumbered 18-34.

Originally filed claims 1-17 have been cancelled.

***Claim Rejections - 35 USC § 101***

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

Claims 19, 20, 25, 26, 31 and 32 are rejected under 35 U.S.C. § 101 because they appear to embrace more than one statutory class of invention. Claims which are intended to embrace both product or machine and process is precluded by language of 35 USC 101, which sets forth statutory classes of the invention in the alternative only. Claims which embrace multiple statutory classes of invention is prohibited (See *Ex parte Lyell*, 17 USPQ2d 1548 (1990)).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19, 20, 25, 26, 31, and 32 are invalid under 35 USC 112, second paragraph, since a claim which purports to be both machine and process is ambiguous and therefore does not

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particularly point out and distinctly claim the subject matter of the invention. *Ex parte Lyell*, 17 USPQ2d 1548 (1990). Therefore, these claims will not be further treated on the merits thereof.

Claims 18-34 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Regarding claim 18, not only is it replete with functional and operational language, but also the word "means" is preceded by the word(s) "entrance-gate", "pushback-gate" and "metering-area" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claim 21, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 22, in line 1, "said entrance gate movement" lacks a prior antecedent.

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Regarding claim 23, functional recitation that "said logical control means controls entrance gate movement contigently based on hair-hair presence sensor inputs into said logical control means" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

Regarding claim 24, not only is it replete with functional and operational language, but also the word "means" is preceded by the word(s) "hair processing system" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Also in line 15, "the linear rate" lacks a prior antecedent.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-34, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Matsumura (U.S. Patent No. 3,903,903).

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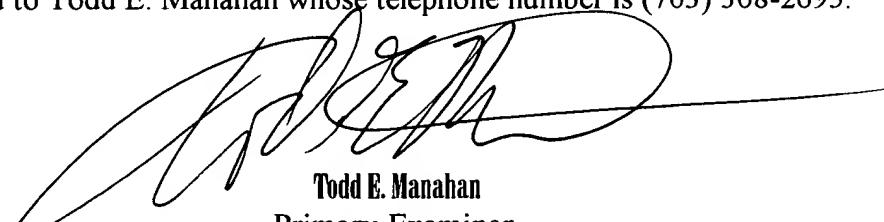
Matsumura discloses a hair processing device which isolates small numbers of hairs between projections. The projections comprise tine assemblies 1, 3, and form stationary channels therebetween. The tine assemblies comprise moving hair handlers or gates shaped to push hairs in a desired direction as set forth in column 2, lines 1-40.

Claims 18-34, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Walsh (U.S. Patent No. 1,678,891).

Walsh discloses a hair processing device which isolates small numbers of hairs between projections. The projections comprise tine assemblies and form stationary channels therebetween. The tine assemblies comprise moving hair handlers or gates 50 shaped to push hairs in a desired direction see figure 2.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is (703) 308-2695.



Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T. E. Manahan  
November 16, 2001

# Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

## INFORMATION ON HOW TO EFFECT DRAWING CHANGES

### **1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

### **2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

#### **Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.